IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

CRIMINAL APPEAL NO. 77 OF 2022

(Originating from Economic No. 98/2019 RM's Arusha)

DICKSON S/O DANIEL @ FILEMON.....APPELLANT

VERSUS

THE D.P.P ..... RESPONDENT

JUDGMENT

14/9/2022 & 21/10/2022

GWAE, J

In the Resident Magistrate of Arusha at Arusha (herein trial Court), the appellant, Dickson Daniel @ Filemon was charged, tried and convicted of two offences namely; unlawfully possession of Government trophies to wit; Giraffe meat and legs c/s 86 (1) (2) (b) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 (d) of the first schedule and section 57 (2) and 60 (2) of the Economic and Organized Crimes Control Act, 200 Revised Edition, 2002 as amended by sections 16 (a) and 13 (b) respectively of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016 (in 2nd count) and

Unlawful possession of weapons to wit muzzleloader ("Gobore") in certain circumstances c/s 103 of the Wildlife Conservation Act, No. 5 of

2009 herein after the Act) read together with paragraph 14 (d) of the first schedule and section 57 (2) and 60 (2) of the Economic and Organized Crimes Control Act, 200 Revised Edition, 2002 as amended by sections 16 (a) and 13 (b) respectively of the Written Law (Misc. Amendments) Act, No. 3 of 2016 (herein to be referred to as EOCCA) in 3rd count to the charge.

Upon conviction, by the trial court, the appellant was subsequently sentenced to pay a fine of Tshs. 333,000,000/= or serve twenty years' jail for the 1st count and for the 2nd count to pay Tshs. 500,000/=or to serve two years' imprisonment. The imposed custodial sentences were ordered to run concurrently whereas the imposed fines were ordered payable consecutively. However, the trial court did acquit the appellant for the offence of unlawful hunting of the scheduled animal without permit c/s to section 47 (a) and of the Wildlife Conservation Act read together with provisions of EOCCA in the 3rd count.

It echoes appropriate if briefs facts giving rise to institution of criminal charge against the appellant are recapitulated, they are not complicated, they are as follows; That, on 23rd day of July 2017 at Napilikunya area in Makame Wildlife Management Area within Kiteto District in Manyara Region, the accused now appellant was found attempting to hunt Giraffe using muzzleloader. That, on the same date, time and place mentioned

herein the appellant was found by officers of Aymanouf of Safaris Ltd in unlawful possession of Giraffe meat with its legs which is equivalent to one killed giraffe without permit. That, the appellant when arrested by the said officers, was interrogated and he admitted and led to the place where he hid giraffe meat and its legs. The trophies were seized, certificate of seizure was filled and signed by the said officers as well as the appellant. Eventually, the giraffe meat and certificate of valuation was prepared. As the giraffe meat was subject to decay, an order of the court was issued for its destruction was issued. Before the trial court, two (2) handing over registers of exhibits, Muzzleloader, certificate of seizure, valuation certificate and inventory form were tendered and duly received in evidence as PE1 &PE2, PE3, PE4, PE5 and PE6 respectively.

Aggrieved by both convictions and sentences, the appellant is now before this court challenging the trial court decision by way of appeal being armed with eleven (11) grounds of appeal and three (3) additional ground of appeal. As the appellant's appeal was disposed of by way of written submission and as the appellant jointly argued grounds of appeal, these are 3rd, 4th, 5th, 9th and 11th and argued the additional grounds seriatim, the appellant's grounds are therefore summarized and as herein under;

1. That, the trial court erred in law and fact when it tried the Economic Case No. 98 of 2019 without Jurisdiction. Therefore, in violation of section 26 (2) and 12)3) (4) of EOCCA and section 113 (2) of the Wildlife Conservation Act
2. That, the search and seizure were not irregular because the appellant was not issued with a receipt acknowledging the seizure as required under section 38 (3) of the Criminal Procedure Act, Cap 20 R.E, 2022
3. That, the trial court erred in law and fact for convicting and sentencing the appellant on a fabricated case which has no independent witness
4. That, the appellant was wrongly tried by three (3) different magistrates as there was no record/reason as to why Hon. Jenifer did not conclude trial and why Hons. Chitanda and later Mushi took over the case. Thus, in contravention with section 214 (1) of the Criminal Procedure Act, Cap 20 Revised Edition, 2019 (CPA).
5. That, the appellant's conviction and sentence offend section 21 (1) of the EOCCA as no Police Officer who conducted the investigation

6. That, the trial court erred in law and fact by convicting and sentencing the appellant without objective analysis of the evidence on record whereas the prosecution did not prove the case beyond reasonable doubt.

On 14th day of September 2022 when this appeal was called on for hearing, Ms. Alice Mtenga the leavened state attorney appeared in court representing the Director of Public Prosecutions (DPP) while the appellant appeared in person and unrepresented. It was consensually agreed that this appeal be argued by way of written submission as earlier explained and the parties did file their respective written submissions in accordance with the court schedule. I shall however consider the parties' written submissions in the course of determining each ground of appeal depicted herein above.

In the 1st ground of the appellant's appeal which reads;

> *That, the trial court erred in law and fact when it tried the Economic Case No. 98 of 2019 without Jurisdiction. Therefore, in violation of section 26 (2) and 12)3) (4) of EOCCA"*

It is the submission by the appellant that there ought to be consent from the DPP conferring the trial court with requisite jurisdiction to hear the Economic Case at hand as per dictates of sections 12 (3) & (4) 26 (2)

of EOCCA. He invited the court to case law in **Jumanne Leonard vs. Republic**, Criminal Appeal, No. 515 of 2019 (unreported-CAT) where it was held that, hearing a case without requisite jurisdiction is nothing but a nullity.

The appellant further attacked the jurisdiction of the trial court in sense that, Arusha Resident Magistrate court would not have jurisdiction unless section 113 (2) of WCA was cited in the statement of the offence thus rendering the charge defective. He urged this court to make a reference to the decision of the Court of Appeal of Tanzania in **DPP vs. Pirbakash Asharaf and 10 others,** Criminal Appeal No. 345 of 2017 (unreported) where it was held;

> *"In response, the learned counsel for the respondents joined hands with the learned state attorney that failure to cite section 113 (2) of the Wildlife Conservation Act, in 2nd, 3rd 4th 5th6th and 7th count rendered the trial a nullity for want of jurisdiction.....Having considered the submission made by respective learned counsel for the parties, we unhesitatingly agree with them that the charge et, undoubtedly suffers from serious defects".*

The appellant then prayed for his appeal to be allowed on the basis of his submission in the first ground.

Response by Ms. Alice in respect of the 1st ground was to the effect that there was compliance of the provisions of the EOCCA as opposed to

the appellant's assertion and that omission to cite section 113 (2) of the WCA is not fatal provided that the charge is drawn pursuant to section 135 (a) (ii) of the CPA as the said section merely gives jurisdiction to courts in any District or area in Tanzania Mainland.

Examining the trial court's records and arguments by the parties, I am in agreement with the submission of the appellant that, the DPP's consent conferring jurisdiction to a subordinate court is mandatory requirement as provided for under provisions of Section 12 and 26 of EOCCA. Courts of law are supposed to have jurisdiction created by statutes in entertaining matters brought before them. This position was stressed in the case of **Ramadhani Omary vs. The Republic**, Criminal Appeal No. 62 of 2019 (unreported) where the Court of Appeal referring to its decision in **Fanuel Martin Ng'unda vs. Herman Mantiri Ng'unda and 20 others**, Civil Appeal No. 8 of 1995 (unreported) held that;

> *"Question of jurisdiction of any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature.....The question of jurisdiction is so fundamental that courts must, as a matter of practice, on the face of it be certain and assured of their jurisdictional position at the commencement of the trial. It is risky and unsafe for the court to proceed with the trial*

of case on the assumption that the court has jurisdiction to adjudicate upon the case".

See the jurisprudence in **Mhole Saguda Nyamagu vs. Republic,** Criminal Appeal No. 337 of 2016 (unreported-CAT).

Basing on the statutory provisions and case law cited above, our courts Are therefore required to closely ascertain if they have the requisite jurisdiction to hear and determine matters brought before them instead of making assumption that they have the same.

Nevertheless, in our instant matter, it is not observed as complained by the appellant since the record shows that there was consent by the DPP and certificate of transfer to the trial court duly signed on 22nd November 2019 and the one which accompanied amended charge sheet dated 21st January 2020 as rightly argued by the learned counsel for the Republic. Hence, this complaint is unfounded and unsupported by the trial court's records.

In the 2nd, limb of the appellant's complaint as far as the 1st ground is concern. It is from the record that, the DPP's office (Prosecutor i/c – Arusha Region) did not plainly cite section 113 (2) of WCA as correctly complained by the appellant. It is also clear that the place where the offences allegedly committed by the appellant is not within Arusha Region

but in Kiteto District in Manyara Region as clearly revealed by the charge as well as the evidence on record.

That being the position, it is now the duty of the court to determine whether failure to cite section 113 (2) of WCA is a fatal irregularity. In my considered view, citation of section 113 (2) of WCA was mandatory since it bestows the trial court with jurisdiction to try the Economic Case at hand out of its territorial jurisdiction. The omission by the prosecution to cite section 113 (2) of WCA renders the trial court to have no jurisdiction to entertain the case.

As the issue of jurisdiction goes to the actual root of the case where all counts leveled against the appellant highest and since I am bound to adhere to the decision of the highest court of the land in the case of **DPP vs. Pirbakash Asharaf and 10 others** (supra). The argument of the learned state attorney that, since the charge disclosed the nature of the offence, then the appellant was not prejudiced is unfounded as the trial court lacked jurisdiction to hear and determine the matter. The 2nd limb of the 1st ground of appeal is not lacking merit.

Now, as to the 4th ground, the court's determination in the 1st ground suffices to dispose of the appeal however, I would like to respond to the 4th ground of appeal on;

"That, the appellant was wrongly tried by three (3) different magistrates as there was no record/reason as to why Hon. Jenifer did not conclude trial and why Hons. Chitanda and later Mushi took over the case. Thus, in contravention with section 214 (1) of the Criminal Procedure Act, Cap 20 Revised Edition, 2019 (CPA)".

Arguing the 4th ground of appeal, the appellant serious stated that the Resident Magistrates who presided over the case did not give reasons as to why the trial predecessor (Hon. Jenifer-RM) did not conclude the trial. He referred this court to section 214 (1) CPA and case law namely; **Issa Sufian and two others vs. Republic** (2017) T.L. S 366 also to the case of **Fahari Bottlers Limited and another vs. Registrar of Titles** (2000) TLR 102.

Admittedly, the learned counsel for the Republic argued that it true as alleged by the appellant that the case against him was presided over by three different magistrates but she submitted that, the appellant was duly informed of the change of the magistrate.

It is common ground that, whenever there is a change of a presiding magistrate or judge who commenced a trial of a case, if she or fails to conclude the trial for either reason beyond his or her control or any other reason, such change or re-assignment must be made known to accused persons and reasons be given and recorded (See section 214 (1) and

section 299 (1) both of the Criminal Procedure Act (supra) as well as case law in the case of **Priscus Kimaro v. Republic**, Criminal Appeal No. 301 of 2013 (unreported-CAT), **Emmanuel Malobo vs. Republic,** Criminal Appeal No. 356 of 2015 (unreported), **Liamba Sinanga v. Republic (**1994) TLR 97 and in a legal personal representative of late **Ramadhani Abas**) **vs. Masoud Mohamed Joshi and two others** and **Fahari Bottlers Limited and another vs. Registrar of Titles** (2000) TLR 102).

In our instant case, I have carefully examined the records especially the typed proceedings, it is plainly revealed that, Hon. Jenifer handled the mater since November 2019, heard all prosecution witnesses till on 5th August 200 when the appellant appeared before Hon. Chitanda-RM, he was properly addressed as per section 214 (1) of CPA and he replied that he was ready to proceed however the reason he was not given reason for inability of the trial predecessor (Hon. Jenifer) to conclude the trial. Nevertheless, the reason for the re-assignment to Hon. Mushi was plainly given to the accused now appellant, the reason being Hon. Chitanda was the one who issued the order for disposal of the trophies allegedly found in unlawful possession of the appellant. With that observation is my view that the appellant was not prejudiced as correctly submitted by the learned state attorney.

I have lastly to comment on the evaluation of evidence especially on the inventory (PE6), I am unable to apprehend credibility of the same since it was not signed by the appellant, the omission amounting to an indication that, the appellant was denied an opportunity of witnessing such destruction or raising any objection. An accused being a party to any criminal proceeding must be involved in any stage be during it trial or pre-trial. In the case of **Michael Gabriel versus The Republic,** Criminal Appeal No. 240 of 2017 (Unreported), the Court of Appeal stated**;**

> *"Normally, a valuation report or an inventory may be tendered in the case of perishable items but the same must have been ordered by the magistrate to be disposed of before the hearing of the case after being taken before him in the presence of the accused person."*

> "The Court of Appeal of Tanzania sitting at Tabora sub-Registry, had also an opportunity to comment on the essence of section 101 of the Wildlife Conservation Act in **Emmanuel Saguda and another v. Republic**, Criminal Appeal No.433B of 2013 (unreported) where it was stated inter alia that:
> "*The Government trophies found in possession of the appellants were required to be tendered in courts as exhibits. This was not done. Instead, a certificate of valuation and inventory form were tendered and admitted*

in court. The appellants did not have an opportunity to raise an objection"

Presently, it was prejudicial for having not involved the appellant in the destruction exercise of the trophy in question.

Having found as herein above, I do not see any valid reason to be detained dealing with other grounds of appeal. More so I do not see if it sounds just and fair for making an order directing a retrial is ordered (See the jurisprudence in the case of **Fatehali Manji vs The Republic** (1966) E.A 343).

In the upshot, I unhesitatingly find the trial court to have lacked jurisdiction to entertain Economic Case 98 of 2019. Therefore, I allow the appellant's appeal and proceed quashing the trial court's proceedings and its judgment and set the same aside. The appellant shall be released from prison forthwith unless held therein for a different lawful cause. It is accordingly ordered.

DATED at **ARUSHA**, this 21st day of October, 2022.

M.R. GWAE
JUDGE